FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL WRIT PETITION NO. 699 OF 2005.

Mayank Ashok Khandwala. ..Petitioner.
vs.
The State of Maharashtra & anr. ..Respondents.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders. :	:	Court's or Judge's orders

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Shri V.N. Kantawala i/b Kantawala & Co.
for the petitioners.
Shri Aabad Ponda H.H. for respondent No.2.
Shri D.P. Adsule, A.P.P. for the State.
(in all matters)

CORAM: V.M.KANADE,J.
DATED: 28-3-2005.

P.C.:

1. Heard Learned Counsel appearing on behalf of the petitioners and learned Counsel for respondent No.2.

2. Petitioners are challenging the issuance of process by the Metropolitan Magistrate, 33rd Court, Ballard Pier. It is submitted by the learned Counsel appearing on behalf of the petitioners that there are no averments or allegations in the complaints to the effect that the petitioners were in-charge of day-to-day management of the said firm. It is submitted that apart from describing the petitioners as one of the partners of the said firm, respondent No.2 has not stated

anything in the complaints or in the statements which were recorded on verification to fasten vicarious liability upon the petitioners. It is submitted that respondent No.2 had merely described the petitioners as partner of the firm in para 1-(b) of the complaint. It is submitted that in the absence of the averment in the ciomplaints and attributing any role to the petitioners, the complaints against the petitioners were liable to be quashed.

3. I have perused the complaints filed by respondent No.2. In the entire complaints the only averment which is made about the petitioners is in para 1(b)) of the complaint, in which it is mentioned that the petitioners are one of the partners in the firm. It is nowhere stated that the petitioners were incharge of day-to-day management and/or responsible for conducting business of the said firm. Therefore, the complaints so far as petitioners are concerned, are liable to be quashed and set aside.

4. Learned Counsel appearing for respondent No.2 has relied upon a judgment of the Apex Court in the case of **Municipal**

Corporaion of Delhi vs. Ram Kishan Rohatagi, reported in AIR 1983 SC 67. In the said judgment, the Apex Court has held that during the trial, if sufficient material comes on record, so as to indicate complexity of the petitioner, remedy of proceeding against the petitioner can be kept open.

5. Since there is no averment in the complaints except a statement in para 1(a) of the complaints, wherein it is stated that the petitioners are partners of the accused No.1, no case is made out against the petitioners in the complaints. The complaints are, therefore, liable to be quashed and set aside qua the petitioners. However, taking into consideration the ratio laid down by the Apex Court in the case of Municipal Corporation of Delhi (Supra), in the event, during the course of the trial if sufficient material is available with the complainant to proceed against the petitioners, he is at liberty to proceed against them under sec.319 of the Cri.P.C.

6. With this clarification, writ petitions are allowed in the above terms.